

§3.310

Malignant glomus tumor
Malignant hemangiopericytoma
Synovial sarcoma (malignant synovioma)
Malignant giant cell tumor of tendon sheath
Malignant schwannoma, including malignant schwannoma with rhabdomyoblastic differentiation (malignant Triton tumor), glandular and epithelioid malignant schwannomas
Malignant mesenchymoma
Malignant granular cell tumor
Alveolar soft part sarcoma
Epithelioid sarcoma
Clear cell sarcoma of tendons and aponeuroses
Extraskeletal Ewing's sarcoma
Congenital and infantile fibrosarcoma
Malignant ganglioneuroma

NOTE 2: For purposes of this section, the term ischemic heart disease does not include hypertension or peripheral manifestations of arteriosclerosis such as peripheral vascular disease or stroke, or any other condition that does not qualify within the generally accepted medical definition of Ischemic heart disease.

(Authority: 38 U.S.C. 501(a) and 1112(b))

[41 FR 55873, Dec. 23, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §3.309, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§3.310 Disabilities that are proximately due to, or aggravated by, service-connected disease or injury.

(a) *General.* Except as provided in §3.300(c), disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. When service connection is thus established for a secondary condition, the secondary condition shall be considered a part of the original condition.

(b) *Aggravation of nonservice-connected disabilities.* Any increase in severity of a nonservice-connected disease or injury that is proximately due to or the result of a service-connected disease or injury, and not due to the natural progress of the nonservice-connected disease, will be service connected. However, VA will not concede that a nonservice-connected disease or injury was aggravated by a service-connected disease or injury unless the baseline level of severity of the nonservice-connected disease or injury is established by medical evidence created before the onset of aggravation or by the earliest med-

ical evidence created at any time between the onset of aggravation and the receipt of medical evidence establishing the current level of severity of the nonservice-connected disease or injury. The rating activity will determine the baseline and current levels of severity under the Schedule for Rating Disabilities (38 CFR part 4) and determine the extent of aggravation by deducting the baseline level of severity, as well as any increase in severity due to the natural progress of the disease, from the current level.

(Authority: 38 U.S.C. 1110 and 1131)

(c) *Cardiovascular disease.* Ischemic heart disease or other cardiovascular disease developing in a veteran who has a service-connected amputation of one lower extremity at or above the knee or service-connected amputations of both lower extremities at or above the ankles, shall be held to be the proximate result of the service-connected amputation or amputations.

(d) *Traumatic brain injury.* (1) In a veteran who has a service-connected traumatic brain injury, the following shall be held to be the proximate result of the service-connected traumatic brain injury (TBI), in the absence of clear evidence to the contrary:

(i) Parkinsonism, including Parkinson's disease, following moderate or severe TBI;

(ii) Unprovoked seizures following moderate or severe TBI;

(iii) Dementias of the following types: presenile dementia of the Alzheimer type, frontotemporal dementia, and dementia with Lewy bodies, if manifest within 15 years following moderate or severe TBI;

(iv) Depression if manifest within 3 years of moderate or severe TBI, or within 12 months of mild TBI; or

(v) Diseases of hormone deficiency that result from hypothalamo-pituitary changes if manifest within 12 months of moderate or severe TBI.

(2) Neither the severity levels nor the time limits in paragraph (d)(1) of this section preclude a finding of service connection for conditions shown by evidence to be proximately due to service-connected TBI. If a claim does not meet the requirements of paragraph

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(d)(1) with respect to the time of manifestation or the severity of the TBI, or both, VA will develop and decide the claim under generally applicable prin-

ciples of service connection without regard to paragraph (d)(1).

(3)(i) For purposes of this section VA will use the following table for determining the severity of a TBI:

Mild	Moderate	Severe
Normal structural imaging LOC = 0–30 min	Normal or abnormal structural imaging ... LOC > 30 min and < 24 hours	Normal or abnormal structural imaging. LOC > 24 hrs.
AOC = a moment up to 24 hrs	AOC > 24 hours. Severity based on other criteria.	
PTA = 0–1 day GCS = 13–15	PTA > 1 and < 7 days GCS = 9–12	PTA > 7 days. GCS = 3–8.

NOTE: The factors considered are:

Structural imaging of the brain.

LOC—Loss of consciousness.

AOC—Alteration of consciousness/mental state.

PTA—Post-traumatic amnesia.

GCS—Glasgow Coma Scale. (For purposes of injury stratification, the Glasgow Coma Scale is measured at or after 24 hours.)

(ii) The determination of the severity level under this paragraph is based on the TBI symptoms at the time of injury or shortly thereafter, rather than the current level of functioning. VA will not require that the TBI meet all the criteria listed under a certain severity level in order to classify the TBI at that severity level. If a TBI meets the criteria in more than one category of severity, then VA will rank the TBI at the highest level in which a criterion is met, except where the qualifying criterion is the same at both levels.

(Authority: 38 U.S.C. 501, 1110 and 1131)

[44 FR 50340, Aug. 28, 1979, as amended at 66 FR 18198, Apr. 6, 2001; 71 FR 52747, Sept. 7, 2006; 78 FR 76208, Dec. 17, 2013]

§3.311 Claims based on exposure to ionizing radiation.

(a) *Determinations of exposure and dose*—(1) *Dose assessment*. In all claims in which it is established that a radiogenic disease first became manifest after service and was not manifest to a compensable degree within any applicable presumptive period as specified in §3.307 or §3.309, and it is contended the disease is a result of exposure to ionizing radiation in service, an assessment will be made as to the size and nature of the radiation dose or doses. When dose estimates provided

pursuant to paragraph (a)(2) of this section are reported as a range of doses to which a veteran may have been exposed, exposure at the highest level of the dose range reported will be presumed.

(Authority: 38 U.S.C. 501)

(2) *Request for dose information*. Where necessary pursuant to paragraph (a)(1) of this section, dose information will be requested as follows:

(i) *Atmospheric nuclear weapons test participation claims*. In claims based upon participation in atmospheric nuclear testing, dose data will in all cases be requested from the appropriate office of the Department of Defense.

(ii) *Hiroshima and Nagasaki occupation claims*. In all claims based on participation in the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, dose data will be requested from the Department of Defense.

(iii) *Other exposure claims*. In all other claims involving radiation exposure, a request will be made for any available records concerning the veteran's exposure to radiation. These records normally include but may not be limited to the veteran's Record of Occupational Exposure to Ionizing Radiation (DD Form 1141), if maintained, service medical records, and other records which may contain information pertaining to the veteran's radiation dose in service. All such records will be forwarded to the Under Secretary for Health, who will be responsible for preparation of a dose estimate, to the extent feasible, based on available methodologies.

(3) *Referral to independent expert*. When necessary to reconcile a material